



Minutes of MAYOR AND COUNCIL Meeting

Approved by Mayor and Council
On June 21, 2004

Date of Meeting: October 13, 2003

The Mayor and Council of the city of Tucson met in regular session, in the Mayor and Council Chambers in City Hall, 255 West Alameda, Tucson Arizona, at 7:37 p.m., on Monday, October 13, 2003, all members having been notified of the time and place thereof.

1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

José J. Ibarra
Carol West
Kathleen Dunbar
Shirley C. Scott
Steve Leal
Fred Ronstadt
Robert E. Walkup
Kathleen S. Detrick

Council Member Ward 1
Council Member Ward 2
Council Member Ward 3
Vice Mayor Ward 4
Council Member Ward 5
Council Member Ward 6
Mayor
City Clerk

Absent/Excused:

None

Staff Members Present:

James Keene
Mike Letcher
Ernie Duarte
Albert Elias

City Manager
Deputy City Manager
Development Services Director
Comprehensive Planning Task Force Director

James Hart

Tucson Police Officer

Michael House

City Attorney

Suzanne Mesich
Carrie Fairchild

City Clerk's Office
Recording Secretary

Stephanie Juarez

Recording Secretary

2. INVOCATION AND PLEDGE OF ALLEGIANCE

The invocation was given by Kathleen S. Detrick, city clerk, after which pledge of allegiance was presented by the entire assembly.

Presentation

Mayor Walkup recognized a group of visiting students from Kazakhstan who had been in Tucson for two weeks. He asked them what they thought of the city and they said it was very hot.

3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 541, dated October 13, 2003, would be received into and made a part of the record. He asked if there were any reports.

A. Dog Park

Council Member Dunbar announced that at the Southern Arizona Homebuilders Association Home Show ward three would have a booth and start accepting reservations for citizens' participation in a dog park. The dog park was scheduled to open on January 1, 2004, and citizens would be able to buy a commemorative tree for their pet, or for \$40 have their pets' name on a Wall of Fame. She invited anyone who was interested to visit them at the home show.

B. Rio Nuevo Tour

Council Member West announced that the Saturday Rio Nuevo Tour for ward four was a big success. They ended up with 30 people on a waiting list, so she would bring another group downtown on November 22. That tour was already filled and she would try to schedule another tour after the first of the year.

C. "Call City Hall" Show

Council Member West said on October 15 her office would host the "Call City Hall" show on cable television. Captains John Levitt and Richard Harper of the police department would discuss the Neighborhood Watch Program and other pertinent issues that pertain to neighborhoods.

D. Neighborhood Cleanup

Council Member Ronstadt said on October 18, 2003, the ward three and ward six offices would sponsor a joint neighborhood cleanup in the north university neighborhood area. It would run from 8:00 a.m. until noon. Participating would be the city of Tucson, the University of Arizona, the U of A Medical Center, and Pima County. There would also be a household hazardous waste site in the area of Lester and Mabel. Anyone who wanted to

participate or take hazardous materials to the site could call his or Council Member Dunbar's office.

4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS

Mayor Walkup announced that city manager's communication number 542, dated October 13, 2003, would be received into and made a part of the record. He asked for the city manager's report.

A. "Tucson in Motion" Day

James Keene, city manager, reported that Sun Tran was set to celebrate "Tucson in Motion Day", on Sunday, October 13, 2003, with a full day of activities planned at three transit centers. The celebration would coincide with the national "Communities in Motion Day", which highlights the benefits of transit in communities. Beginning at 8:00 a.m., at the Ronstadt Center the mayor would officially declare "Tucson in Motion Day", and Sun Tran staff would thank riders for their support by offering free Krispy Kreme Donuts at all three transit centers from 7:00 to 9:00 a.m. Also at the Ronstadt Center there would be music, prizes and free pizza at noon.

B. Stone Avenue Temple

Mr. Keene said the Stone Avenue Temple, built in 1910, was the first synagogue in the Arizona Territory and the cornerstone of Tucson's Jewish community for almost four decades. After the congregation moved, the building gradually slumped into dilapidation until a group of individuals purchased the property and began restoring it. With the help of \$21,000 in Back to Basics funds, the structure is the center of town activity again. On October 2, 2003, the National Trust for Historic Preservation recognized the historic Stone Avenue Temple with a prestigious national preservation honor award. It was one of 21 national awards presented by the Trust at its weeklong national preservation conference in Denver, Colorado.

C. Women's Studies Advisory Council

Mr. Keene said the Women's Studies Advisory Council is a membership community organization that promotes and supports the students and faculty of the University of Arizona Women's Studies Department and its activities. Its members include approximately 250 women from the Tucson community: homemakers, businesswomen, faculty members, medical and legal professionals, artists, writers, and others. He was bringing this to the council's attention because the Women's Studies Advisory Council would be honoring Liz Rodriguez Miller, assistant city manager, with its seventh annual "Women Who Lead Award" for her many contributions and outstanding accomplishments to the Tucson community. Also receiving this distinction were Becky Montano, retired Tucson Unified School District Administrator, and Sally Simmons, an attorney with Lewis and Roca. There would be a reception at the Arizona Inn on October 14, 2003. He congratulated Ms. Miller.

5. CALL TO THE AUDIENCE

Mayor Walkup announced that this was the time any member of the public was invited to address the mayor and council on any issue that was not on the agenda. He asked speakers to limit their presentations to three minutes and advised that there would be a second call to the audience at the end of the meeting. He said he had received a number of written requests to speak and would call on those people first.

A. Parks & Recreation Fees

Claude Haynes, said he had been a resident of Tucson for more than 20 years and his wife had been a resident for more than 35 years. Unfortunately, with the merger of the company he works for, he had to move to Gilbert, Arizona, but for the past four years he had been the director of the "Tucson Meet Yourself" Festival. He hoped some of the council members had attended. More than 25,000 Tucsonans attended and celebrated the cultural diversity of Tucson's folk, ethnic, and cultural communities. He commented on what a warm and welcoming city Tucson has been. Over the course of time, the council waived the fees for the festival and they appreciated that. He also wanted to recognize the strong hard work of the parks and recreation people and the electrician's office, especially in a week that started out so wet. They worked diligently to make sure that the festival got started on time and he appreciated that. He said he had talked to some of the council members and Jim Griffith, past director of "Tucson Meet Yourself", had spoken with others. Bob Shots (ph), president of the Cultural Exchange Council, had spoken with Mayor Walkup. They were concerned about the vendors' fees and the fees charged by parks and recreation for public events. In association with Liz Miller, assistant city manager and Bob Martin, interim director of parks and recreation, they were able to at least delay paying the fees to the city until after the event, so that the participants would not have to pay them up front.

Regrettably, over the course of his four years as president he had seen the fees go from \$20 per event, to \$40, to \$40 per day, to the current \$60 per day. He said he took a good piece of the profits from groups such as the Turkish Students Club or Club España, when he took away \$180. He hoped that the council would be able to look at those fees, not later on as part of next year's budget, but now because arts agencies, community groups, and nonprofits were not profit centers. They were very fragile organizations and the current fees would force them to use county or private property, or just disappear because they would not be able to survive under the fee structure that was currently in place. He hoped the council would be able to address this issue very soon and that they would be able to offer the support these agencies need to stay in operation.

B. Impact Fees

Bob Cook, said he wished to address one of the afternoon study session items. Before he came to this meeting his wife said something very interesting when she noted that people were less afraid of the consequences of the status quo than they were of changing the status quo. He thought there was something very essential in that. He thinks the community was facing some major strategic questions and he did not see those issues in the public discussions, in the annual report, or in day-to-day discourse. He was a member of the Cost of Growth Task Force and he knew a lot about the development of the element the council discussed in study session. The charge to the city as a result of that overwhelming election in November of 2001 was to develop a cost of growth study to determine what the

costs of growth were in Tucson. The consultant's report, the phase one cost of service report, discussed the cost of service.

He asked what was a service, how was a service delivered, and what made up a service and said it was not just the capital costs, the costs to construct an infrastructure or the equipment that was necessary to deliver a service. It was also all of the operation and maintenance costs that went along with it. That was the discussion the committee had and it seemed like it had dropped out of continuing discussions. Unless the city got a better handle on the true full costs of growth, it was going to be subsidizing growth ad infinitum. If there was one issue that the community had to grapple with during the next 20 years it was how to manage the city in a way that would accommodate growth and do deferred maintenance and rebuild the urban core of the community. It did not take a genius to read the headlines and see that trauma centers and job training programs were being cut, that education funding was low and the potholes in city streets could not even be fixed.

He said he had lived in Tucson since 1960 and he had seen the course of the community change. Unless things changed fundamentally in the way the city was being run, the community was in big trouble. The era of cheap oil was ending. When he was on the energy commission, they did a lot to promote energy performance standards. The Southern Arizona Homebuilders Association opposed those standards in the early 1990s, but the commission got them passed, the builders accepted them and the community was saving more than \$200 million a year because they were building smarter buildings. When the energy commission came up with a study in 2001 that showed that the energy costs of the transportation system \$300 million a year between 1998 and 2000, no one wanted to hear that. No one wanted to hear the bad news.

Mayor Walkup asked Mr. Cook to finish his comments.

Mr. Cook said he thought the community had to look at the whole notion that the city could continue to subsidize growth. Tucson was entering a process of compromising on impact fees in order to subsidize the development of a satellite city in the Houghton Corridor. That would be at the expense of rebuilding the downtown and the city center in a way that people could compete and have the quality of life they once had. What happened in California this week with the recall of the governor could happen in Arizona. The citizens have the ability to recall public officials when they fail to meet the needs of the existing community.

C. Manual of Government Processes

Bill Katzel, said his topic was a procedural deception manual. He has frequently addressed the governing body during the past several years, primarily through the first and last calls to the audience. On occasion, he had testified at public hearings, town hall meetings, and once before the transportation subcommittee. He had accumulated quite a video library and had registered his testimony with the city clerk's office. As his granddaughter matures and takes her place as a citizen advocate, he intended to use his resources as educational tools to enhance her citizenship participation in the community. As a third grader, she had already run for vice president of the student council. In his opinion, most of his efforts had fallen on deaf ears. Accordingly, he was changing his mode of operation and intended to produce a manual dealing with procedural deception of

government processes. It would document the manipulative processes of how the individual citizen was substantially excluded from meaningful participation in government actions that affect his or her wellbeing.

The word "deception" is defined by Webster's New Collegiate Dictionary as "the fact or condition of being deceived". "Deceived" is defined as to cause to accept as true or valid what is false or invalid. His manual would contain documentation on such topics as the city charter form of government with the office of the mayor, the six ward offices, and the city manager, city attorney, and city clerk. It would document the inner workings or lack thereof of the various city departments. It would document the inner workings of the subcommittees, committees, special sessions, executive sessions, and emergency sessions, study sessions and regular sessions of the mayor and council and how the public was substantially foreclosed from participating in these processes. It would discuss procedures such as the three minutes allowed versus the five minutes authorized for citizen comments during the council's call to the audience, the sequence of events at public hearings, how agendas are set and many other items too numerous to mention in the time allotted. He hoped the manual would be a tool for use by citizens to get involved with their government to determine their own destiny. Maybe it would be the subject of a documentation video such as "Roger and Me". He looked forward to distributing portions of his manual, as they became available.

D. Dog License Fees

Elezabeth Cameron, said she was surprised to learn at the afternoon study session that the agenda items her group had been bringing to the mayor and council for four years through Council Member Ibarra's office had been taken over by Council Member Dunbar. She stated that Council Member Dunbar made certain claims against her in public, which were lies and allowed by Mayor Walkup, to insult a disabled woman who appeared before the council to talk about the dog ordinance that her group had been bringing before the council and trying to get reversed. The woman talked about losing her dog and being hit by a car and Council Member Dunbar sat there laughing. That was inappropriate behavior for a council member in this community. It was inappropriate for a council member at any time to call a constituent a liar.

The issue Ms. Cameron was bringing forth was a letter that Council Member Dunbar claimed did not exist. At the time, Council Member Dunbar said the council did not need to reconsider the law because it was such a success, which was not true. Council Member Dunbar claimed that Rodrigo Silva said it was a success and that was not true. The accounts had been documented, collected, and worked on for four years.

This afternoon she heard the council members say the fees were going to be lowered to \$40. Ms. Cameron said that would not solve the problem. Her group told the council that these issues were going to come forward four years ago, before they happened, and they had all come to pass. Her group suggested a task force, a nuisance ordinance and other things including a spay/neuter proposal, but Council Member Dunbar would not allow that because it would bite into the money allowed by the Humane Society. She submitted a document to be viewed by the public so that on the 27th, when the forum took place, people would see what was put together by the people of the community, not Council Member Dunbar's proposal. She said Council Member Dunbar owed her an apology for publicly calling her a liar when she knew she was telling the truth.

Mayor Walkup said normal procedure did not allow council members to respond to comments made during call to the audience, but in this instance he would allow Council Member Dunbar to respond and asked Ms. Cameron to stay focused on the issue.

Ms. Cameron said that while she sat and waited for the meeting to begin, Council Member Dunbar had again come up and harassed her. She thought Council Member Dunbar's actions toward the disabled in the community were intolerable.

Mayor Walkup called on Council Member Dunbar.

Council Member Dunbar said she had no comments. She thought she had been very open with the council. She had open conversations and if anyone was calling anyone a liar, it had been Ms. Cameron toward her. She thought she had sat and taken it for two years and she was very tired of it.

Ms. Cameron submitted paperwork noting it was the paperwork that Council Member Dunbar had said did not exist, and said she did turn it in to Council Member Dunbar and sent one to each of the council members. Ms. Cameron asked that the mayor and council look at it and take it into account. It contained viable options for solving some of the issues they had with loose dogs. It was not just lowering the ordinance.

Mayor Walkup said the council would do that and called on the next speaker.

E. Mayor & Council Meeting Rules; Repairs to City Streets

Robert Reus, said he did not have a prepared presentation, but he wanted to remind the mayor that the agenda and the five minute timer say that speakers at call to the audience had five minutes to make their comments. In his public and private life when he puts something in writing, he always backed it up. He thought the mayor had an obligation to do the same. If the council wanted to institute a three-minute time limit, they should change the cards, the timer, and the agendas so that they are at least operating within the law, both the spirit and letter.

Mr. Reus continued that he heard some noise in front of his house and looked out to find a street crew doing some paving. Tucson's streets were falling apart and he had hoped they would do some work. He said they did spend an hour putting down some asphalt, approximately five feet by eight feet and then left. They had big holes in the streets and lots of little cracks. The streets needed to be sealed every two years. The city manager government and the mayoral administration had neglected the streets to the point that they were very close to having to be torn up and rebuilt. The repairs needed to be done, they could not wait, nor can the citizens wait two years for a change of government. The streets could wait even through next monsoon season or there would be serious problems. He asked the city manager or mayor, whoever is responsible, to please start working on the streets.

Mayor Walkup asked if anyone else wished to address the mayor and council. There was no one.

6. CONSENT AGENDA – ITEMS A THROUGH E

Mayor Walkup announced that the reports and recommendations from the city manager on the consent agenda items would be received into and made a part of the record. He asked the city clerk to read the consent agenda items.

- A. CITY COURT: AUTHORIZING CITY MAGISTRATES TO HEAR AND RESOLVE CIVIL CITATIONS ISSUED TO JUVENILES FOR VIOLATION OF TUCSON CODE PROVISIONS
 - (1) Report from City Manager OCT13-03-537 CITY-WIDE
 - (2) Resolution No. 19694 relating to city court; approving and authorizing Tucson City Magistrates to hear and resolve citations for violations of TC 20-28, 20-29, 11-70.1, 11-140 through 11-143, issued to persons under eighteen years of age; and declaring an emergency.
- B. INDUSTRIAL DEVELOPMENT AUTHORITY: REAPPOINTING CHRISTOPHER CARROLL AND APPOINTING MARY LOU MOBRAY TO THE BOARD OF DIRECTORS
 - (1) Report from City Manager OCT13-03-538 CITY-WIDE
 - (2) Resolution No. 19695 relating to the Industrial Development Authority of the City of Tucson; reappointing Christopher Carroll and appointing Mary Lou Mobray to the Board of Directors for six-year terms expiring March 12, 2009; and declaring an emergency.
- C. REAL PROPERTY: ACQUISITION OF EASEMENT AND TEMPORARY REMOVAL OF RAIL SERVICE AT 3430 EAST 36TH STREET
 - (1) Report from City Manager OCT13-03-543 W5
 - (2) Resolution No. 19697 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, an easement in a certain portion of real property at 3430 E. 36th Street, Tucson, Arizona, to facilitate the installation of a portion of a rail spur line; and declaring an emergency.
- D. AGREEMENT: WITH AMERICAN SHOWS INC. FOR THE USE OF THE TUCSON CONVENTION CENTER FACILITIES
 - (1) Report from City Manager OCT13-03-534 CITY-WIDE

- (2) Resolution No. 19699 relating to the Tucson Convention Center; authorizing approval of a long-term agreement with the American Shows Inc. for the use of Tucson Convention Center facilities; and declaring an emergency.
- E. FINANCE: CONTINGENCY FUND TRANSFER FOR THE POSITIVE AGING WOMEN CONFERENCE

- (1) Report from City Manager OCT13-03-549 CITY-WIDE
- (2) Resolution No. 19700 relating to finance; approving and authorizing the transfer of One Thousand Dollars (\$1,000.00) from the Contingency Fund to Organization 001-183-1838-268, for a "Positive Aging" conference; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member West, that consent agenda items A through E be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt,
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Consent agenda items A through E were declared passed and adopted by a roll call vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS

Mayor Walkup announced that city manager's communication number 535, dated October 13, 2003, would be received into and made a part of the record. He asked the city clerk to read the liquor license agenda.

(b) New License(s)

*	(1) LOS SAENZ MEXICAN RESTAURANT 345 W. Drachman Street Applicant: Andrew A. Saenz City #066-03, located in Ward 3 Series 12 Action must be taken by: October 17, 2003	<u>Staff Recommendation</u> Police: No Recommendation DSD: In Compliance Bus. License: In Compliance
	(2) FIRE FLY FOOD & SPIRITS	<u>Staff Recommendation</u>
**		

509 N. 4th Avenue
Applicant: Douglas E. Smith

Police: Denied

* See Page 11

** See Page 12

City #067-03, located in Ward 6
Series 12
Action must be taken by: October 17, 2003
Public Opinion: Protests Filed
Support Filed

DSD: In Compliance
Bus. License: In Compliance

Person/Location Transfer

- (3) MISS SAIGON RESTAURANT
1072 N. Campbell Avenue
Applicant: Anne H. Nguyen
City #068-03, located in Ward 6
Series 7

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Bus. License: In Compliance

Action must be taken by: October 25, 2003

(c) Special Event(s)

- (1) SACRED HEART CHURCH
601 E. Ft. Lowell Road
Applicant: Catherine M. Horton
City #T087-03, located in Ward 3
Date of Event: October 18, 2003

Staff Recommendation

Police: In Compliance
DSD: In Compliance

- (2) JUNIOR LEAGUE OF TUCSON, INC.
900 S. Randolph Way,
Hi Corbett Field Concourse
Applicant: Jean S. Popham
City #T088-03, located in Ward 6
Date of Event: October 24, 2003

Staff Recommendation

Police: In Compliance
DSD: In Compliance
Parks & Rec.: In Compliance

- (3) TUCSON SYMPHONY SOCIETY
140 N. Main Avenue
Applicant: Colin A. Columna
City #T089-03, located in Ward 1
Date of Event: October 24, 2003

Staff Recommendation

Police: In Compliance
DSD: In Compliance

- (4) ST. AMBROSE CATHOLIC SCHOOL
300 S. Tucson Blvd.
Applicant: Gerald Leyva
City #T091-03, located in Ward 6
Date of Event: October 18, 2003
October 19, 2003

Staff Recommendation

Police: In Compliance
DSD: In Compliance

- (5) TETRA CORPORATION
BEACON FOUNDATION

Staff Recommendation

25 E. Drachman Street
Applicant: Stan P. Hilkemeyer
City #T098-03, located in Ward 3
Date of Event: October 24, 2003
 October 25, 2003
 October 26, 2003

Police: In Compliance
DSD: In Compliance

Kathleen S. Detrick, city clerk, advised that the applications for Los Saenz Mexican Restaurant and Fire Fly Food and Spirits should be considered separately.

It was moved by Council Member West, seconded by Council Member Dunbar and carried by a voice vote of 7 to 0, that liquor license applications for 7b(3), Miss Saigon Restaurant; 7c(1), Sacred Heart Church; 7c(2), Junior League of Tucson, Inc.; 7c(3), Tucson Symphony Society; 7c(4), St. Ambrose Catholic School; and 7c(5), Tetra Corporation/Beacon Foundation, be forwarded to the state department of liquor licenses and control with a recommendation for approval.

7. LIQUOR LICENSE APPLICATIONS ? (b)(1)

(b) New License(s)

*	(1)	LOS SAENZ MEXICAN RESTAURANT	<u>Staff Recommendation</u>
		345 W. Drachman Street	
		Applicant: Andrew A. Saenz	Police: No Recommendation
		City #066-03, located in Ward 3	DSD: In Compliance
		Series 12	Bus. License: In Compliance
		Action must be taken by: October 17, 2003	

Kathleen S. Detrick, city clerk, said her office had not received processing payment fees for this item, so she must recommend denial. The police department has not completed its recommendation. Without the processing fees, Ms. Detrick reported that a recommendation for approval could not be made. Ms. Detrick added that the applicant had not checked in with her staff.

Mayor Walkup called on Council Member Dunbar.

Council Member Dunbar asked if the applicant was present, and hearing no one, said she would have to vote for denial on the license for the same reasons as the city clerk. She said Mr. Saenz had not shown to be qualified or reliable. Council Member Dunbar pointed out that this area was a high crime area, saturated with liquor licenses. She was very concerned that the applicant had not responded to numerous attempts by the police department, the ward three office, and the city clerk's office. Council Member Dunbar said if the applicant did not want to come forward when he was trying to apply for a liquor license, she could not imagine what would happen if there were problems when the restaurant opened.

It was moved by Council Member Dunbar, seconded by Council Member West, that the liquor license for 7b(1), Los Saenz Mexican Restaurant be forwarded to the state liquor board with a recommendation of denial.

Ms. Detrick noted that before proceeding, it would be appropriate for the police department to address the council.

Officer James Hart, Tucson Police Department, said the Tucson Police Department has made repeated attempts to contact the applicant, Andrew A. Saenz, to discuss his application. However, Mr. Saenz had been unresponsive, and as of this date, the phone number listed at this residence had been disconnected. He had not responded to numerous messages left on his cellular phone. The Tucson Police Department had been unable to complete its required investigation for this application, due to the lack of responsiveness of the applicant. Consequently, 'no recommendation' as to the appropriateness of this application would be proper.

Mayor Walkup asked if there was further discussion and hearing none, called for the vote.

The motion was carried by a voice vote of 7 to 0.

7. LIQUOR LICENSE APPLICATIONS ? (b)(2)

(b) New License(s)

(2)	FIRE FLY FOOD & SPIRITS	<u>Staff Recommendation</u>
	509 N. 4 th Avenue	
	Applicant: Douglas E. Smith	Police: Denied
	City #067-03, located in Ward 6	DSD: In Compliance
	Series 12	Bus. License: In Compliance
	Action must be taken by: October 17, 2003	
	Public Opinion: Protests Filed	
	Support Filed	

Kathleen S. Detrick, city clerk, said the police department recommended denial and protests had been filed. The applicant had not checked in.

Mayor Walkup called on Council Member Ronstadt.

Council Member Ronstadt said he would like the police department to provide its report, and then the applicant to respond.

Officer James Hart, Tucson Police Department, said the Tucson Police Department originally forwarded a recommendation of approval for a Series 12 (Restaurant) liquor license for the Firefly Food & Spirits. Due to concerns raised in two recent inspections at the business, the Tucson Police Department was now recommending denial for this application. Administrative investigations by TPD and the Arizona Department of Liquor Licenses and Control (DLLC) were pending in reference to the inspections in question.

Officer Hart stated that TPD received information that the restaurant was conducting business as a bar and placing a speaker in front of the business playing loud music. A bar owner on 4th Avenue verified that in fact, the Firefly had occasionally placed a speaker in

front of the business, which had disturbed the peace. As a result of the information, TPD Special Investigations initiated an investigation.

An initial review revealed that the posted hours for the business were 5:00 p.m. until 5:00 a.m. However, a business employee stated that the business hours were from 5:00 p.m. until 1:00 a.m. The significance of this discrepancy was that the former times suggested the business was a restaurant and the latter times suggested that it was being operated as a bar.

Officer Hart continued that on Friday, October 3, 2003, Investigator Quesada of the Arizona department of liquor licenses and control inspected the restaurant. He arrived at 10:05 p.m. As he was walking up to the front door, Investigator Quesada noted that music was being played outside and a patron was allowed to leave the premise with a beer bottle, which is a Title 4 violation. When Investigator Quesada entered the business, he was stopped and was required to pay a cover charge, which suggested that the business was not being operated as a restaurant. He was then told by an employee that after 10:00 p.m. the business was no longer a restaurant, but that it was being operated as a bar. That is a possible administrative violation of department of liquor licenses and control regulations that requires additional investigation. The owner, Douglas Smith, was not on the premise. Mr. Smith had leased the building to a disc jockey from New York Productions. The DJ advised that the owner would be in later to cook. At the time of the inspection, there were no cooks on duty. This is a possible administrative violation of the requirements of the existing license and necessitates further investigation.

On Saturday, October 4, 2003, TPD officers attempted to go inside the Firefly and check the identification of a possible underage patron. The doorman stopped the officers and questioned them as to their business on the property. The employee was not familiar with Title 4 of the Arizona Revised Statutes, which is a violation of the statute. The officers found the business was overcrowded and requested a fire inspector. Officers estimated there were 200 people inside the business. Inspector D'Auria, of the Tucson Fire Department, had the music shut off to clear the business and determined that the interior occupant load was 48 and the patio occupant load could temporarily hold 35 more people. The business was allowed to reopen with the appropriate occupancy. Inspector D'Auria issued the business a pre-citation for over-crowding.

Officer Hart said pending further investigation of the actual and potential violations, TPD recommended denial of this application. There were serious concerns raised about the manner in which the business was operating and the safety concerns it posed to its patrons, employees, and the general public.

Council Member Ronstadt asked the applicant to respond.

Douglas Smith, owner of Firefly, said he disagreed with everything the TPD officer said. He stated that when he purchased the business, it already had the speakers out in front. He did not know that was a violation of his liquor license, that he could not play soft music that invites customers in. Ironically, he said, all of his customers that come in to eat dinner say that the reason they come in is because of the soft jazz music they play out in front. He had never had any complaints from any of the businesses around him, nor has TPD ever been over to assess that the music so loud it was turned down. Since then, he had

disconnected the speakers in the front and in the back patio, so they no longer play outside music.

Mr. Smith asked council to keep in mind that during "Club Crawl" weekend about 50,000 people show up on 4th Avenue. He said it is kind of hard to keep a few hundred people from coming into the business, especially when there were bands in there. He said 200 people did not fit in his business. He disagreed that there were 200 people in his business. When he was there, he counted 38 on the back patio with the Fire Marshall, and they counted 47 inside. The reason they didn't play music was that there was a line outside the door, and as people were leaving, they were letting people inside. He said there were never 200 people inside his establishment.

Mr. Smith said that comments from Investigator Quesada, that the business hours are only from 5:00 p.m. to 10:00 p.m. serving food, were incorrect. They serve food. They open up at 4 o'clock in the afternoon. Their business hours were from 4:00 p.m. to 1:00 a.m. On Thursdays, Fridays and Saturdays, they stay open late hours until 3:00 a.m. or 4:00 a.m., until the last customer leaves. They then reopen the kitchen for breakfast, to serve those that have been out on 4th Avenue, so they can sober up. When Investigator Quesada arrived at his business on that Friday, ironically they had to get out of the kitchen, because there were waiters and waitresses carrying food out to customers that were outside his establishment. So he questioned how the officers could say they were not serving food or that he was not conducting his business as a restaurant. He said that was incorrect. He serves food from the minute they open until the minute they close. They never deny anybody food. He said he did not know it was against regulations for him not to be able to rent his facility out, because the previous owners before him rented the facility out to this company that rented it that Friday when Investigator Quesada showed up. Mr. Smith said had he known that was a violation, he would not have rented the facility.

Mr. Smith said he does operate his facility as a restaurant/bar. It is important to his business that he be able to serve a cocktail, a beer, or a glass of wine when patrons come in to order food. If he is not able to do that, they are not going to come in and eat at his establishment.

Mr. Smith asked if he would be getting a warning, a chance, or if this was a one-time thing. He did not understand how the process worked. He said he worked twelve years in the car business as a General Manager for Toyota, and he saved all his money to move into business on his own. He did not feel he should just get one opportunity at this. He said he did everything Investigator Quesada wanted him to do. He called Investigator Quesada several times this week, so they could see what had to be done to put this in restaurant organization. However, Investigator Quesada never returned his calls.

Council Member Ibarra suggested that the council explain to Mr. Smith what the council does and where his request would go from here, so that he understands that this might not be the last chance he has.

Mayor Walkup called on Council Member Ronstadt.

Council Member Ronstadt said that whether the council recommended approval or denial to the State Board, the board would take final action. He added that Firefly Food & Spirits, since it opened, has just had consistent complaints.

Mr. Smith interjected that he was a new owner. He had only owned the business for a month. He said there were previous problems with Firefly. He kept the name, but had nothing to do with the previous owners who had all the trouble with TPD. He said when he bought the restaurant from them, they had pool tables in the establishment. He removed the pool tables.

Council Member Ronstadt continued that there had been consistent complaints from the surrounding neighborhood, concerns that the establishment was operating as a bar. They were applying for a series 12 license, which was a restaurant license. Given the testimony from the Tucson Police Department, and as the applicant spoke, it was clear to him that he was not aware of Title 4 laws, which he felt was problematic in itself. The Fourth Avenue Merchants have had problems with this establishment. There were currently 30 active bar licenses within a half-mile radius of this location. There were currently 52 total licenses within a half-mile of this establishment. There appeared to be an issue of the applicant's capability, qualifications, and reliability.

Given that, Council Member Ronstadt said his motion would be to recommend denial.

It was moved by Council Member Ronstadt, seconded by Council Member Dunbar, that the liquor license application for 7b(2), Fire Fly Food & Spirits, be forwarded to the state liquor board with a recommendation for denial.

Council Member West said there was another issue, the business license had been denied. She asked the city clerk to report on that issues.

Ms. Detrick said the business license division now indicated they were in compliance and, therefore, had removed that recommendation.

Mayor Walkup asked if there was further discussion.

Council Member Ibarra pointed out that all the mayor and council were doing was making a recommendation to the state liquor board, who makes the final decision. He recommended that Mr. Smith get his situation in order when he goes before the state liquor board to make his presentation. That was when the final decision would be made.

Mayor Walkup added that Mr. Smith still had another chance, but he would have to play his cards in the right sequence. He said Mr. Smith needed to make sure the state liquor board understood that he was the new owner and that he had done considerable things to make sure he was in compliance.

Mayor Walkup asked if there was further discussion and hearing none, called for the vote.

The motion was carried by a voice vote of 7 to 0.

8. RIO NUEVO: WEST CONGRESS RESIDENTIAL DEVELOPMENT ACCEPTANCE OF OFFER TO PURCHASE

Mayor Walkup announced that city manager's communication number 546, dated October 13, 2003, would be received into and made a part of the record. He asked the city clerk to read ordinance 9907 by number and title only.

Ordinance No. 9907

Relating to real property; vacating and declaring certain City-owned real property along West Congress Street to be surplus property, and authorizing the sale thereof to Rio Development Company, LLC; and declaring an emergency.

Mayor Walkup asked the council's pleasure.

It was moved by Council Member Ibarra, seconded by Council Member Leal, that ordinance 9907 be passed and adopted and that staff be directed to begin the appropriate and timely review process to facilitate development consistent with the proposal tended by Rio Development Company, LLC.

Council Member Ibarra thanked city staff for working hard with the neighbors to make this development happen. He thought it was a great accomplishment for the city and for the Rio Nuevo Project.

Mayor Walkup asked if there was any discussion.

Council Member Ronstadt said the council talked about this issue during its afternoon study session and he thought everyone was pleased with the project and happy with the process. This would not be the last project in the downtown area and it was becoming clear that many developers were interested in obtaining property and working on projects. It had become highly competitive. He wanted to say publicly that it was inappropriate that some of the development teams had tried to circumvent the process by going to the mayor and council. The city had a very clear process for procurement, the request for proposals process and the RFQ process. He thought it was incredibly inappropriate for development teams, individuals, or corporations to approach the mayor and council and try to get their proposals pushed ahead of the proposals that were approved in the process. It happened to him today and it was his understanding that stakeholders in other proposals had approached other council members. The council did its business in the open, it followed a process, and if anyone came to him in the future, his or her name would go straight to the bottom of the list. The council and city staff worked very hard with the neighbors and the stakeholders to create a process, they were going to stick to that process. The subject project was valuable, exciting, and a product of that process.

Mayor Walkup said he was pleased to receive the proposals and had been overcome by how well they had been thought out and presented to the council. He was pleased, as he was sure the other council members were, with how hard the area neighborhoods worked to make Rio Nuevo successful. He thought the public would see, once the proposed projects were displayed, what a nice and wonderful place it would be. It would be an asset to the city. He thanked the people who stayed with the concept and made it happen and the neighborhoods that worked so hard.

Mayor Walkup asked for the roll call on the motion to pass and adopt ordinance no. 9907.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance no. 9907 was declared passed and adopted by a roll call vote of 7 to 0.

9. LEASE AGREEMENT: WITH THE “ARIZONA HEAT” FOR USE OF HI CORBETT STADIUM

Mayor Walkup announced that city manager’s communication number 545, dated October 13, 2003, would be received into and made a part of the record. He asked the city clerk to read resolution 19698 by number and title only.

Resolution No. 19698

Relating to Parks and Recreation; approving and authorizing the execution of a lease agreement for the use of Hi Corbett Field by Greek Guys AZ, LLC dba Arizona Heat to operate a women’s National Professional Fastpitch Softball franchise; and declaring an emergency.

Mayor Walkup asked the council’s pleasure.

It was moved by Vice Mayor Scott, seconded by Council Member Leal, that resolution 9698 be passed and adopted.

Vice Mayor Scott said the Women’s National Professional Fast Pitch Softball Team was astonishing. It was a growing, energized sport and it would get better.

Mayor Walkup asked if there was any discussion. There was none.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution 19698 was declared passed and adopted by a roll call vote of 7 to 0.

10. LICENSE AGREEMENT: AMENDMENT TO AGREEMENT WITH SFPP, L.P. dba KINDER MORGAN

Mayor Walkup announced that city manager's communication number 547, dated October 13, 2003 would be received into and made a part of the record. He said the council was going to handle this item a little differently than usual. It had not been scheduled as a public hearing, but considering the interest he was going to allow a number of people to come forward and testify. He said he had received written requests from five people to address the council, both for and against, and he would call on those people after city staff made their presentation. However, Council Member Ibarra wished to comment first.

Council Member Ibarra asked if the council had to make a motion to reconsider this item.

Michael House, city attorney said that was the council's usual procedure.

It was moved by Council Member Ibarra, seconded by Council Member Leal, that the council reconsider the amendment to the license agreement with Kinder Morgan, which was approved by the council on September 22, 2003.

Mayor Walkup said the council would move into the discussion portion, the order would be a presentation by Kinder Morgan's representative, followed by Chief Newburn of the fire department, then the city attorney.

Dave Corman, project permitting director for Kinder Morgan, said on September 22, 2003, the council approved an amendment to Kinder Morgan's license agreement with the city that authorized the immediate replacement of their eight-inch refined petroleum products pipeline, which was built in 1955, with a new state-of-the-art, 12-inch diameter pipeline. He commended the mayor and council for taking this important step to improve and upgrade the critical infrastructure that was in place and wanted to reiterate Kinder Morgan's position. It was very clear that they and the department of transportation believed that anytime new steel could be put in the ground it was the best form of leak protection, leak prevention, possible. That was what Kinder Morgan was proposing to spend \$12 million to do. He said that since September 22, Kinder Morgan had moved forward aggressively to obtain the expedited permits and approvals necessary to begin immediate construction of the pipeline and to complete the construction by February 1, 2004. Kinder Morgan had conducted since September 22 a data base research on archeological and cultural sites. They had performed a cultural resources survey of the entire right-of-way. They had prepared a cultural resource survey report and circulated it to interested parties for comment. They prepared a

cultural resources treatment plan, surveyed the native plants that exist along the entire route, completed a native plant mitigation plan in accordance with city ordinances, and developed a native plant restoration plan in association with the desert laboratory for the Tumamoc Hill area. They ordered the new pipe and pre-fabricated bins for the Tucson project. They had moved on detail design and substructure review and moved forward with the acquisition of temporary construction easements. They had developed a bilingual project brochure and completed aerial surveys of the entire route. They had additional meetings with the fire department and other officials to establish communication protocols and further clarify the operational issues. They obtained a city of Tucson permit to excavate for the project and they had initiated detailed surveying and marking of the pipeline route in preparation for the October 15, 2003, construction start. To date Kinder Morgan had expended or committed more than \$2 million in the planning of the \$12 million project.

Mr. Corman said they met several times with a few citizens who had voiced concerns about the upcoming project in a good faith effort to understand their concerns. Because of these meetings, they agreed on four minor design modifications within the existing easements. First, in the La Cholla Neighborhood, Kinder Morgan would provide four feet of cover of the pipeline instead of the standard three feet. Kinder Morgan would increase the wall thickness in the area instead of using what they had in their existing eight-inch pipeline. Where the existing pipelines were located, along the west side of La Cholla Boulevard, Kinder Morgan had agreed to move the new pipeline location from the eastern edge of the easement to the western edge, farther away from the residents on the La Cholla Boulevard area. In addition, along Silverbell Road, the current pipelines go inside Murietta Park and Kinder Morgan had agreed, as a part of what they were doing, to move the relocated pipeline out of the park and into Silverbell Road. As was discussed at the previous meeting, a part of what Kinder Morgan requested, associated with the license amendment, and approved by the council, was the ability to move the pipeline out of its existing location. There were several blocks where properties had moved up adjacent to the pipeline over the years and the existing pipeline was in fact in yards along Silverbell Road. Kinder Morgan would move it out of those yards and into Silverbell Road. Kinder Morgan, in a good faith effort, working with the residents, had agreed in a letter to the residents to do those four things.

Mr. Corman continued that they had further agreed that once the 12-mile Tucson pipeline replacement project was completed, scheduled for February 1, 2004, they were willing to discuss future alternative routing of their existing pipeline subject to the availability of city, county, federal and state funding. Concerns had been raised regarding the diameter of the pipeline and Kinder Morgan had proposed to replace their existing eight-inch diameter pipeline with a 12-inch diameter pipeline. They would do that because they are the major operator and owner of the infrastructure that delivered refined petroleum products to the state of Arizona, to Tucson and to Phoenix. They also served many other states across the country with 10,000 miles of pipelines. Whenever they built a new pipeline or replaced an existing pipeline, the responsible thing to do was look at what the demand required. That was the first step and when they did that, they looked at the diameter of the pipeline, the pumping capacity, and a variety of other factors. In this particular case, the replacement of the 11 miles in the Tucson city limits was a part of a larger project, a project that they had been planning and were currently in the process of permitting between El Paso, Texas, through Tucson to Phoenix. It is a 230-mile replacement project costing \$200 million and the

subject 11 miles is part of that project. When they considered replacing pipelines, they considered the diameter of the pipeline to meet the demand.

He said the responsible thing to do in this case was to meet the demand of the state of Arizona as a part of that larger project. He said it would be nonsensical for them to put in an eight-inch diameter pipeline when they were moving the rest of the pipeline to 12 inches or more in diameter. He added for the record that as a part of that east line project, the proposed increase and through-put that would come into the city would be 53,000 barrels per day. In addition, they had already replaced a mile of the pipeline in the area where the rupture occurred on July 30, 2003. That pipeline was replaced with 12-inch diameter pipe, so it was important that they move forward to replace the rest of the pipeline with 12-inch diameter pipe. They needed to do that because as part of their federally mandated internal inspection program that they perform on pipelines, they needed to have uniform pipe diameter all the way through. That was because the internal inspection tools they use, the smart pigs, needed to fit the diameter of the pipe and the only way to make that happen was to have uniform diameter pipe. The fact that they were asking for and planning on building a uniform diameter 12-inch pipe would provide improved efficiency in the safety inspections that they perform on the pipeline.

Mr. Corman reiterated that they had sunk about \$2 million into the subject project since September 22, including the order of 12-inch diameter pipe. He urged the mayor and council to stay the course. Kinder Morgan had all of the permits the city required; they had requested and obtained those permits and they had committed substantial resources to moving forward with the construction of the project. They began to mobilize the equipment this week; they set up an office in the area and had begun the contracting process. He reiterated that most of the permits were in hand and they had begun the construction. Following the events of July 30, he said it would be the responsible action of the mayor and council to reaffirm its decision of September 22.

Mayor Walkup recognized Council Member Ibarra.

Council Member Ibarra thanked Mr. Corman and said he appreciated that he met with the neighbors. He had only one question and he thought it was the most important question. He asked it at the last meeting and said he expected the same answer at this meeting because he thought Mr. Corman's integrity was at stake. He asked if Mr. Corman could guarantee the pipeline once it was installed.

Mr. Corman said he could guarantee that the replacement of an eight-inch diameter pipeline that was built in 1955 with state-of-the-art steel, state-of-the-art coatings, was the safest and most responsible thing for the council to do. As the experts that had been operating and maintaining the pipelines since 1955, Kinder Morgan was telling the council that was the responsible thing for it to do.

Council Member Ibarra said he understood that, but the last time the council discussed this issue, not to question Mr. Corman's integrity, he asked that same question and Mr. Corman said no. He gave no explanation, no rhetoric, he just said no and Council Member Ibarra thought that was the most important fact. They talk about the safety of the pipeline, they talk about the integrity of the pipeline, but in the end, when Mr. Corman walked

away and returned to whatever city he was from and went to his home, the fact was that it was the constituents of the Tucson Mayor and Council who lived above the pipeline. It was their families and kids that played in the neighborhoods, who lived and had invested in the homes. He thought it was somewhat ironic that Mr. Corman gave a very rhetorical answer to the question at this meeting, but not the answer he gave at the September 22 meeting, which was no, he could not guarantee the pipeline at all. Council Member Ibarra thought that was the most important point to make at the end. Kinder Morgan's representatives did not guarantee the pipeline, but they would get to leave the city and not have to worry about it. He said he looked forward to the city attorney letting the council know what the situation was.

Mayor Walkup asked the fire chief to comment.

Dan Newburn, Tucson Fire Chief, said since the leak of July 30, the Tucson Fire Department had aggressively applied themselves to understanding the installation, operation, and best management practices of underground fuel pipelines, including integrity in the management programs. The fire department had known of the existence of the pipeline for decades. However, they really had not focused much attention on them, probably because they did not have any regulatory authority over the pipeline, and they had never had an emergency response to a pipeline incident that he was aware of in his 29 years with the fire department. He believed the city had made real progress in developing a relationship not only with Kinder Morgan, but also with the people locally who operate and maintain the pipeline, as well as with the contractors who were installing the new pipe. Fire department staff was familiarizing themselves with Kinder Morgan's emergency response plans. He had talked to the council on previous occasions and said they would assume responsibility for doing that. They had numbers and names of people they could contact 24 hours a day, seven days a week, 365 days a year and they were engaged in joint training with the people that operate and maintain the pipeline. This week they were sending an assistant chief and a battalion chief to Los Angeles for some specialty training. Probably most important was that Kinder Morgan was sharing what he considered to be privileged information with the fire department. There was activity at the state and federal levels that in his opinion would ultimately benefit the citizens of Tucson.

As was evident in Senator McCain's hearing in Phoenix last week, there was a clear need to improve communication between the office of pipeline safety and the Arizona Corporation Commission. Chief Newburn said he had great confidence that Tucson's interests would be served by Senator McCain as well as by Representative Lopes and the Essential Services Task Force in that area. America's infrastructure was aging. One of the things the department found out was that the subject 50-year old pipe was put in Tucson at the same Kinder Morgan was installing pipe all over America. So, the problem was actually pretty big and a lot of effort was being made to do something about it. In a strange sense, the fact that Tucson had an event had accelerated the schedule or process of taking the old pipe out of the ground and replacing it. He thought Kinder Morgan had a very aggressive schedule to replace the pipe. They were suggesting that if work continued as programmed they would be done by the first of February. He personally believed, as he said before, that replacing the 50-year old pipe with new pipe was in the best interest of the community and he would like to see the project stay on schedule.

Mayor Walkup called on the city attorney for a summary of a report he gave to the council during the executive session earlier in the day.

Mr. House said because the ordinance that authorized the amendment to the license agreement had already gone into effect the actual amendment to the license agreement had been executed by the parties. Permits had been issued to Kinder Morgan to do the work and Kinder Morgan had incurred substantial obligations and reliance on the agreement and the permits. It was Mr. House's opinion that the mayor and council could not legally reconsider the matter or unilaterally reopen the agreement.

Mayor Walkup reminded everyone that this item was not scheduled on the agenda as a public hearing, but he thought there was considerable interest in the community. It was a very delicate issue. The public good, welfare and safety and how to ensure those was at stake. The council wanted to ensure that public safety as well as it could. He reiterated that he had received a number of cards and said he would allow each speaker five minutes, but asked if they did not need the full five minutes they should not use it. He would appreciate that. He called on the first speaker.

Frank Greer, said he had been a resident at his current address and in the city of Tucson for 31 years. To put the Kinder Morgan issue in perspective he wanted to give some background. The pipeline was constructed in 1955 on Pima County right-of-way. One thing that he thought was worth noting was that the pipeline was routed to avoid downtown and he thought that specifically spoke to someone's concern in 1955 about the safety of the pipeline. In 1955, there was an economic racism in the placement of the pipeline. With three possible exceptions, the whole pipeline route was annexed by the city of Tucson on March 18, 1960 and he thought there was some relevance in that as there were only five years between the pipeline construction and the annexation. Within that five to ten-year period his neighborhood, the neighborhood north of Murietta Park, and the one immediately east of Grant and Silverbell, Safeway and Walgreen's, were constructed. He thought the real issue was that the city inherited the right-of-way. The county did the routing in 1955 and nothing was done to allow for the proper setbacks of residences from the known pipeline.

He said it was very interesting that the closest encroachment was by Monterey Homes, which was currently under construction and common sense made him ask why homes were still be constructed along the pipeline. Talking about encroachment, he said there was a city water tank directly above the pipeline on the 28th Street drainage way. If the city could not even acknowledge the danger of the pipeline and put a water tank over it, in addition to the other setback issues, they needed to talk about that. He thought Kinder Morgan had acted responsibly since the rupture. If they had acted responsibly before he thought was questionable, at least from what he had seen in the Arizona Corporation Commission documents.

Mr. Greer thought the problem could be boiled down to two things and the council might or might not like what he was going to say. He thought there was blatant disregard for the citizens who were essentially disenfranchised before the *Civil Rights Act* of 1964, namely the Blacks and Hispanics in the community. He also thought there had been improper planning and zoning by the city and the county that led to the current problems.

What they were discussing was too close to homes, businesses, and schools and Kinder Morgan had a legitimate right-of-way.

If the motion was not rescinded, and he understood the city's reasoning for why that could not be done, the next best step was mitigation of all of those issues along the pipeline. The issues that Mr. Corman brought up were issues that Mr. Greer addressed personally with Kinder Morgan, not the committee. He took the issue back to his committee and they told him they were concerned with the welfare of other residents. Today they also talked about the neighborhood immediately north of Murietta Park. They were not just concerned about themselves and Desert Hills. They were concerned about the city of Tucson.

Another way to mitigate would be to move the pipeline north of Starr Pass, away from the A-Mountain Neighborhood. He thought there was a moral and legal responsibility of the council, if they approved the current construction of the pipeline, to look at the history of what the council and the county did in 1955, when they ignored the easements along the right-of-way and proper setbacks by zoning. If the council wanted to put the pipeline in, they owed it to the citizens of the West Side to address some very simple issues. Why did they allow developers to build homes that people bought without anyone telling them otherwise? Why were there no markers in his neighborhood? Why was his safety and the safety of all of the neighborhoods of the West Side endangered? He asked if the council was going to construct the pipeline and forget about them. He said the council would have a moral and legal responsibility if they voted for the construction of the pipeline to continue to look at the possibility of relocation, even after the pipeline was constructed. If they did not do that, they would have failed the community.

Les Wolf, which does not adjoin the subject pipeline, said he lived at his present location for 25 years. He raised his family there and now his grandson visits him regularly there. He was not concerned about the safety of the pipeline. He thought it was 12 to 14 years ago that Silverbell was widened. The pipeline was dug up, at that time Southern Pacific Railroad was operating the pipeline, they dug it up and re-wrapped it. The purpose for doing that was because they knew they would no longer have easy access to it and they knew maintenance was needed. He thought that had been done the whole length of the Silverbell Road improvements, up to Grant Road and he had no recollection of what happened north of Grant. As for the issue of safety, he said he believed that everyone had a greater risk when they filled their vehicle with gas than they did living next to the gas line. Kinder Morgan obviously operated over 10,000 miles of pipeline. He did not know what their history is, but thought the council probably did. He was familiar with steel pipeline construction and he was familiar with the natural gas pipelines that run through the neighborhoods and around the schools. That may be a great deal more volatile than the liquid petroleum pipelines that run several feet deep through this little part of town. Another thing he wanted the council to consider, going back some twenty years, was when the jet from Davis-Monthan Air Force Base crashed right next to Mansfield Middle School. No one asked Davis-Monthan to move. The people who oppose the gas line and its continued operation need to consider that position just in case someone from Davis-Monthan was paying attention.

Ted Downing, State Representative, 1402 E. Kleindale, spoke in support of Council Member Ibarra's motion, and said in light of some of the testimony that had been given at

this meeting, Kinder Morgan was asking the city council to transfer the risk to the homeowners. He thought they had a history of transferring risk to homeowners, developers, and businesses since they have been operating in Tucson. Kinder Morgan last passed an inspection in 1994. Since that point, they had continual problems. No one had seen the 2003 report, it was still being held secret, but he understood they were nonconforming and that there were problems at that time. During the time that it did not pass inspection, the homeowners were bearing the risk because they knew if they had a problem with the pipe they could repair it. Kinder Morgan knew they had a 48-year-old pipeline and only came forward after it broke. What they were trying to do was turn lemons into lemonade, a very profitable lemonade. He said that Mr. Corman just said there would 53,000 barrels of gasoline going through the pipeline each day.

Representative Downing said that in doing some quick calculations, at just the retail value of gasoline per year, that is about \$2.1 billion, assuming they get a 12 percent profit. That is not chump change. He asked what the deal was. Kinder Morgan had an eight-inch pipeline and they were expanding it to a 12-inch. By doing that they more than doubled the through-put and that allowed them to double their earnings. They did that based on a city council resolution. They did not really explain or disclose until this meeting how much profit they would make off this little deal. Next to it there was a six-inch pipeline that was operating at low pressure through the same ditch because it was not capable of carrying its fully designed pressure. What was the city going to do when Kinder Morgan comes back and wants to change that one?

Last week the council moved in haste based on the best information it had and made an emergency decision. He suggested that Kinder Morgan took advantage of the council. The risk was that on the one side they could risk legal action from Kinder Morgan. They claimed they spent \$2 million, but that is nothing compared to what they were going to make. They said they spent \$2 million and then they said committed or expended. They should be asked what they did expend. They spent that very quickly, in 22 days, and for that the city ran the risk of Kinder Morgan suing. On the other hand, the risk to the homeowners had to be looked at. The council heard earlier that there was a chance the homeowners might hit the city with some legal action requesting relocation. That was very expensive. There were some cases where the city had to exercise eminent domain. What was at stake was the homeowners' equity on the one side versus Kinder Morgan's profits on the other.

Representative Downing congratulated Mr. Kinder for making the *Forbes Magazine* top 400 richest men in the United States. Certainly, he had the ability to consider a little bit more personal and direct action and come to talk to people directly in Tucson. There was an expression in Spanish that says every rooster sings in his own corral. He said Mr. Kinder was in Tucson and Tucsonans know how to crow.

Lillian Lopez-Grant, vice president of the Menlo Park Neighborhood Association and president of the West Side Coalition, said Menlo Park extends all the way around Tumamoc Hill, so they had a major stake in the area. She had a personal stake in the area. Her daughter and grandson lived across Greasewood from Tumamoc Hill. She was very concerned, not just in terms of the neighborhood association, but she had a personal concern about what was going to happen with the pipeline. She hoped that the council would stay focused and move fast to replace the pipes. She understood that there were cracks in

the existing pipeline, that there were problems and that the pipelines did not pass inspections. That bothered her a lot. She thought the city was moving rapidly and she would not like to see any delays. She asked the council to get it done. The city was moving rapidly and Kinder Morgan was moving rapidly. Things were moving a lot faster than when the sewer pipes broke on Speedway. She commended the council for doing the good things they do. The entire infrastructure on the West Side was at least 50 years old, probably more.

She had lived in the same house in Menlo Park for 58 years. Her mother bought the house right after World War II and she had yet to see anyone digging up anything. Right next door, in front of her house, there was a little orange and red sign warning of the natural gas pipes that run straight down Congress Street. They were everywhere. There was more pressure per square inch on those lines than on the gasoline lines. She would like to see the mayor and council not just reacting when pipes like Kinder Morgan's blow, but doing something about it before it happens. The lines should be inspected before there was an even greater disaster than on July 30. The years go by and each year had a new disaster. What was going to happen next year? She asked the council to pay attention to those things, that was very important, but the one thing she urged them to do was stay focused. They should get the pipelines changed, and if they can be moved fine, but if not, she would be happy to see that her children on the other side of Greasewood are safe. She knew 2003 was an election year and asked the council not to make this issue a political game. Native plants, lizards, and owls do not vote.

Peter Hormel, said he was a homeowner in Desert Hills Neighborhood and the residents had formed a group called Safe Tucson. A lot of them were present and they had put a lot of work into this issue, along with some of the members of the council. They took the last three weeks to get up to speed, did a lot of research and had a lot of documentation. They learned a lot about the pipeline, the procedure, the easements, all of those kinds of things and once people got lost in the details what they often forgot was what has been referred to several times at this meeting as an event. This event was an oil spill with 10,000 gallons of gasoline that poured into the neighborhoods. What the residents realized at that time was that they had a gasoline pipeline running through their neighborhood that they did not know about before. No one told them when they bought their houses, the signs were put up very recently, and then it blew. In 1999, Washington had a pipeline leak, but it did not just leak and cause property damage, it exploded and three children in a park were killed. These things happen. This was a safety issue and a risk. He would rather it was not referred to as an event, it was an oil spill. A lot had been heard about an agreement that was reached in haste by the city council and Kinder Morgan had said they spent some money, or they might spend some money. Mr. Hormel asked what price had the city council put on the citizens' safety, on their families' safety, and on the kids' safety when they play at Murietta Park. His daughter goes to the park and he asked if the council was worried about contractual losses at that point. Was it the residents' losses or Kinder Morgan's that the council was worried about? Mr. Hormel said it seemed that Kinder Morgan could take care of themselves with 10,000 miles of pipelines.

Mr. Hormel noted that Kinder Morgan talked about meeting demand and through-put, both of which were code names for profit. The issue came down to a question of advocacy. The council was the citizens' representative. The council represented the citizens and they expected the council to defend them against industrial hazards. Instead, the council told the

people that there was no "out" clause in an agreement it entered into without input from a single affected neighbor and without any thought to its constituents' safety or property values. A new pipeline with twice the capacity of gasoline was going to be flowing through the neighborhoods. He said it would have been more difficult for him to get the permitting to enclose his carport than it was for Kinder Morgan to get a pipeline to 53,000 gallons of gasoline through his yard. That was unbelievable. Now the council was saying that after the pipeline spilled 10,000 gallons of gasoline the best it could do was roll over for this pipeline corporation and allow them to pump that much gasoline to Phoenix. The residents felt that they had been sold out, sold down the river, down I-10 as it were, to benefit some large corporation of gasoline consumers in Phoenix. The council spent its bargaining power when it approved the pipeline expansion.

Mr. Hormel said they knew that Kinder Morgan wanted a 12-inch pipeline. They wanted the extra through-put, the extra dollars. That expansion was the leverage that could have been used to relocate the pipeline to a safer place. It was the bargaining power against a massive corporation, but that bargaining power was gone. The council said they had entered into a final agreement and they sold the citizens down the river. They did not even ask the residents. No one got to talk and now they had to live with it because once that pipeline went into the ground it was not coming out and it was not going anywhere else. Those 53,000 gallons would be going through his neighborhood until the pipeline leaks again. He wanted the council to remember the invocation that was given at the beginning of the council meeting. It contained some very nice words about benefiting Tucsonans, about making the difficult decisions that benefit everyone in Tucson. It seemed that the council had acted to benefit Kinder Morgan, a corporation that obviously was pursuing its own interests, it could be counted on to do that, and it is benefiting gasoline consumers in Phoenix.

He commended Council Members Ibarra and Leal and Vice Mayor Scott for sticking up for the residents on this issue. Not all of the council members had done that and the residents now had to live with twice as much gasoline and twice as much risk as they had before and they know what can happen from Bellingham, Washington. Kinder Morgan had proposed a couple of mitigating things for his neighborhood only, but the residents did not want to buy into that or sign off on anything because the pipeline extends throughout South Tucson and the West Side. By getting a thicker pipeline along La Cholla the residents there would be selling out the other neighborhoods, just as had been done to them. After the history with the amendment and the agreement, he asked the council what the price was of the safety of their families.

Mayor Walkup asked if there was any discussion.

Council Member West said the council had certainly heard some very compelling testimony from both sides of the issue. She thought that she was acting in the best interest of the community and for its safety when she voted on September 22, and she still believed that. To leave the pipe in the ground and not think about what could happen if it burst was really a foolhardy kind of thing. By voting last week to reconsider at this meeting the council did get Kinder Morgan to sit down with a lot of the neighborhood residents and talk about some of the issues, which were difficult issues. Before the event in August, she had no idea that there was a gasoline pipeline running through the community. She doubted that everyone knew that, so it was something that was most unfortunate. In one of her

neighborhoods, very close to Eastside City Hall there was a natural gas explosion that caused injuries and damage. All of Tucson's communities live with that everyday. She asked how many years the contract would be in effect.

Mr. House said he believed the amendment to the licensing agreement would expire in three years.

Council Member West noted that a concern was voiced that the decision would preclude county permit discussions in 2006. She asked if he had any concern that that was the case.

Mr. House said it was his understanding that the franchise that the county has granted for the pipeline in the unincorporated areas expired in 2006 and would be up for re-negotiation at that time, as would the city's license.

Council Member West said the council had heard a lot about profit and things like that, but she thought the bottom line was the public's safety and the best bet was to work with the state and federal government to see that the concerns that the citizens expressed were addressed. She certainly agreed that the city needed to be much more vigilant than it had been. She was surprised that the Monterey Homes Development was placed where it was, but perhaps the council did not know about the pipeline. She had been told that four of the five property owners that were affected plan to continue to live in their homes. She did not know if there was any confirmation of that, she got the information second hand, but she thought the council had done the best it could with this issue. She thought the governing body needed to continue to work with people, particularly the federal and state governments to see that the issues are addressed.

Mayor Walkup asked if there was any additional discussion.

Council Member Ronstadt said he was glad to hear Council Member West's comments. He thought about the dialogue that occurred between Council Member Ibarra and Kinder Morgan's representative before the public comments. The issue of a guarantee was intriguing. It was true that Kinder Morgan said there was no guarantee that the new pipeline would not rupture, but there was also no guarantee that a drunk driver would not kill one of the council members or a citizen as they drive home from this meeting. A guarantee was a tough thing. Kinder Morgan also could not guarantee that the pipe, which was presently in the ground, would not break and explode while the council sat and waited for two years for its relocation. The council was told by the city's safety official that the safest course of action was to replace the line as quickly as possible. Those sentiments were also echoed by two of the residents and others in the community had said the pipe should be replaced immediately, that the council should act immediately and not wait for another catastrophe, they should act now. He said that was what the council did and he thought the council's vote on the motion to reconsider would clearly be a vote of confidence in the city's fire chief because that is the expertise that they rely on to make a public safety decision. To him it was that clear. The council was acting; they were not sitting and waiting for another catastrophe. They were taking positive action to make sure the city was safe based on the information from the fire chief, on technical information, not on politics or political rhetoric or

demagoguery. The council's decision was based on engineering facts and that was how he was voting.

Mayor Walkup asked if there was any further discussion.

Vice Mayor Scott said she thought the heart of the issue was the integrity of the pipe and people living near it had created the problem. She thought that the pipe had to be fixed immediately, but did that mean that when it is fixed the council could not ask Kinder Morgan to reroute it and therefore have something that is fixed and safe in place and rerouted. She did not know if that was possible, no one had talked about it. They had only heard about this particular pipe staying where it was and being replaced. She had not heard about the alternative to fix it, which the council wanted very much to do, and during the remainder of the contract ask Kinder Morgan to consider investing in rerouting it.

Mayor Walkup said he was involved with the presentation to Senator McCain last week and could speak to the source of origin of the information on the five homes. He decided if he had to go testify in front of Senator McCain that he had better do his homework, so he went out and walked the pipeline in the Monterey Homes area. He was walking along and observing where the pipe had been. It had clearly been replaced and the soil had been put back in place. Some men were drilling and doing some soil sampling to make sure that the soil underneath the replaced pipe was clean and appropriate. As he was walking along a woman came up to him and when he asked who she was, she said she was the sales person for Monterey Homes. He asked her to tell him about the incident and the status of the construction that was going on because Monterey was still building. She told him that there were about 70 homes in the subdivision and they were all sold. None had closed, but the builder had earnest money for all of the seventy homes. After the event at the end of July, about 20 people asked for their earnest money back. He asked what the present status was and she told him they had resold 10 of those 20 homes. He asked if they were sold under any special allowances and she told him no, they were sold under the original sale price and she expected that the remaining ten would be resold very shortly. He asked where the five homes that were destroyed had been and she said they were where he was standing. There was a vacant area close to where the rupture occurred and where the men were drilling. She told him that of those five, four buyers did not ask for their money back, but wanted their homes rebuilt in place because they liked the lot sites and they wanted the homes replaced with no compensation. The fifth buyer asked for his money back and that home had not been resold.

Mayor Walkup said Vice Mayor Scott was precisely right, and that was what he testified in front of Senator McCain, that it was imperative that the old 1955 pipe be replaced with new steel as quickly as possible. That was the safest and most appropriate thing to do for the people who live along the pipeline. Secondly, it was precisely what Vice Mayor Scott indicated. He testified to Senator McCain that it was imperative that during that process they discuss with Kinder Morgan the possibility of putting the pipeline somewhere else, other than in the middle of a populated area. The governor said the same thing. The state needed a policy that did not allow pipelines running through densely populated areas, but that was a strategy for the state. He thought that was appropriate and item six in the letter from Kinder Morgan to Frank Greer stated that they would sit down and start talking about the possibilities of the relocation long term. He accepted that proposal, he thought it was an

appropriate thing to do. The pipe should be replaced with new steel and the process of figuring out how to get the pipes out of the community should begin. He recognized Council Member Leal.

Council Member Leal said he had a number of things, the first was the reference to the gasoline incident that created pollution and the comment that the city fathers knew about it in 1989 and did nothing. In fact, the mayor and council did not find out about that until years later. The city fathers who knew about it were the city manager and the fire chief and both of them were fired for withholding information from the mayor and council. He respected the present fire chief, but they are all human and they are not infallible. The suggestion was made to replace the pipeline and then look for another route. He thinks that is both a cynical and foggy-headed thing to propose. Once Kinder Morgan spent the money to put a new 12-inch line in the existing route, they were not going to agree to spend an equal amount of money to locate it somewhere else when 99% of its life was left. It was insulting to the residents for anyone to suggest that. He was sorry they had to hear it. Many things gave windows into people's souls and let others know how they act. Kinder Morgan sent a letter to the neighborhood and to the credit of Mr. Hormel and Mr. Greer as thinking and moral people, they told Kinder Morgan that they would not be bought off. They were not concerned just with themselves, but about all of the neighborhoods on the route. It was a sad commentary for Kinder Morgan to offer certain neighborhoods a pipe with thicker walls when the rest of Tucson and the lower income and higher percentages of minorities would get the thin stuff. When people talk about environmental racism and elitism that was the kind of action they were referring to. He thought the council should look for repairs, not necessarily replacement and make the pipeline as safe as possible. If Kinder Morgan could not estimate the odds of failure at this time, they certainly could not tell the odds of the brand new one failing. There was a three-year-old pipeline in America that just blew up. When Kinder Morgan was last before the council and Council Member Ibarra asked them to look for another route, their representative asked what was the point. If they moved the pipeline to a less populated area, it would be built up in ten or fifteen years and they would be facing the same dilemma

Council Member Leal said in point of fact the council and staff had agreed to take pipeline locations into consideration when all land use issues are carried forward so that it would not happen again. Some of them had tried to learn from history so that they did not repeat it, so they could better protect the citizens, but they would lose this opportunity if they allowed the subject line to go in the existing route. They had an opportunity. The council was told that if they said no, Kinder Morgan would just go do what they wanted. They could put the eight-inch line in the route and that was true, but there was no way in the world they would have done that because it was about making money and the volume needs for the future dictated no less than 12 inches. The council could have called their bluff and said no. Maybe they would not have put in an eight-inch line and might have been willing to discuss another route. Council Member Leal said that opportunity was squandered in haste. One of the speakers said if he had tried to get a carport enclosed it would have taken him longer than it took Kinder Morgan to get the okay from the city to do their incredibly huge and complicated project with huge consequences. That all speaks for itself.

Mayor Walkup called on Council Member Ibarra.

Council Member Ibarra thanked the neighborhood for their hard work. They had really researched the issue and looked into all of the alternatives. They fought hard and he thought they deserved a big hand because of their continued commitment to their neighbors and to the families in the area. He was not as articulate or charismatic as Mr. Hormel or Council Member Leal, but he wanted to point out a couple of misconceptions that had been raised. One was that the council was doing nothing. He said that was incorrect. What the council asked for on the 22nd of September was a two-pronged approach. One was that the existing pipeline be looked at and all of its deficiencies be found and replaced immediately. That way the council could ensure the safety of the neighborhoods. The second thing was that Kinder Morgan look at rerouting the line. The council did not give permission for them to put in a new line, but to look at doing a two-prong approach by making sure that the existing line was safe and to look at rerouting the line. The second thing he wanted to communicate was that the line that Kinder Morgan puts in, the council was agreeable to discussing, not committing, but discussing future routing. If they really thought that Kinder Morgan was going to commit and be honest at the table and put in a new line, rerouting a new line outside the city of Tucson, outside the populated areas, they would have turned the discussion into commitment. He is not a lawyer, but Kinder Morgan went on to say, and they underlined, that they had committed to \$12 million, so there was no real commitment that they would discuss rerouting the line at all. That was what they are telling the council because that was what the council wanted to hear. That was what they wanted to walk away from. The fact of the matter was that the mayor and council had a choice and the choice was who to stand up for. Who did they advocate for? Who's cause did they champion? Did they champion the cause of a company that was making millions and millions of dollars or did they advocate for the families on the South and West Sides? Did they advocate for the company that was going to make millions and millions of dollars in the future or did they look at Ms. Lopez-Grant's grandchildren and tell them that if they did what their grandmother did and get the house their mother built and end up living there for 55 years, did they really want that pipeline under them for all that time? He said no, they did not. The biggest commitment the council could make to Ms. Lopez-Grant's grandchildren, the biggest commitment they could make to all of the kids on the South and West sides, who he hoped would stay there, was to move the pipeline because the council was not solving the problem.

By allowing a new pipeline to be put in they were not solving the problem. They were only passing it on to their kids because 20 to 30 years down the road that pipeline was still going to be underneath their houses and it would be in worse shape than it was right now. Who would be at risk? Not Lillian Lopez-Grant, but her grandchildren. He asked why the council was passing the problem onto those kids and said at some point they had to show some vision, some leadership and most importantly at some point they had to say that they were standing up for the community even if meant going to court. The council had to show that. He did not know how the votes were going to go, but at some point the council would have to bite the bullet and go with the community, the families, and the kids because they were the most important priority.

Mayor Walkup asked for a roll call on the motion to reconsider the amendment to the license agreement.

Upon roll call, the results were:

Aye: Council Members Ibarra and Leal; Vice Mayor Scott

Nay: Council Members West, Dunbar and Ronstadt; Mayor Walkup

Absent/Excused: None

The motion failed by a roll call vote of 4 to 3.

RECESS: 9:28 p.m.

Mayor Walkup announced that the council would stand at recess for five minutes.

RECONVENE: 9:40 p.m.

Mayor Walkup called the meeting to order and upon roll call, those present and absent were:

Present:

José J. Ibarra

Council Member Ward 1

Carol West

Council Member Ward 2

Kathleen Dunbar

Council Member Ward 3

Shirley C. Scott

Vice Mayor Ward 4

Steve Leal

Council Member Ward 5

Fred Ronstadt

Council Member Ward 6

Robert E. Walkup

Mayor

Kathleen S. Detrick

City Clerk

11. PUBLIC HEARING: ZONING (C9-81-45) HIRAM BANKS – SAN MARCOS BOULEVARD, MH-1 ZONING, CHANGE OF CONDITIONS AND ORDINANCE ADOPTION

Kathleen S. Detrick, city clerk, advised that a condition had been added to this case, which staff would read into the record.

Ernie Duarte, development services director, noted that on September 2, 2003, the mayor and council directed staff to identify projects that contain pipelines such as the Kinder Morgan line or El Paso Natural Gas pipeline. In this particular case staff had included two conditions. One asked the engineer of record to perform some due diligence and identify the location of the El Paso Natural Gas pipeline. The other condition asked that a note be placed on both the tentative and final plat disclosing that there was a pipeline adjacent to the subject development. The developer had agreed to the condition to include a statement on the location of the El Paso Natural Gas pipeline in or along with the public report provided to prospective purchasers in accordance with Arizona Revised Statutes, Section 32-2183.

Mayor Walkup announced that city manager's communication number 539, dated October 13, 2003, would be received into and made a part of the record. He also

announced that this was the time and place legally advertised for a public hearing on a request for a change of conditions to allow increased residential density on the project site. He asked if the applicant or a representative was present and if so, were they aware of and amenable to the proposed standard conditions.

Michael Baker, vice present of FSSB Inc., said the project was a small 33-lot subdivision located at San Marcos Boulevard, west of Greasewood on approximately eight acres. They had taken the Cholla Wash, which was listed in the *W.A.S.H. ordinance*, by setting that area aside. A second minor wash runs through the property and they were preserving it. Their design preserved approximately 30 percent of the natural open space and they were asking for 33-lots of small residential subdivision. He said they agreed with all of the zoning conditions, but wanted clarification of condition number 11. They had already held a neighborhood meeting. It was held in Council Member Ibarra's office. The public turned out and everything was positive. He was asked why they were being asked to hold another meeting with the homeowners associations within a mile of the project.

Mr. Duarte noted that in condition number 11 staff was asking the applicant to hold a neighborhood association meeting with surrounding neighborhoods within one mile of the site prior to submittal of the tentative plat to the community design review committee (CDRC). The meeting that Mr. Baker referred to that was held in Council Member Ibarra's office was to discuss the concept associated with the case that was presented. As the project got a little more developed and more detailed it would go into the CDRC process and that was the information staff was asking the applicant to share with surrounding neighbors. Condition number 11 asked for a little more detailed information.

Mayor Walkup announced that the public hearing was scheduled to last for no more than one hour and asked speakers to limit their presentations to no more than five minutes. He asked if anyone in the audience wished to address the council.

Nancy Weiss, said she was present with a neighbor representing the Starr Pass Shadows Homeowners Association, which was the neighborhood directly to the north of the proposed development. She said she had no idea of the incredible irony of the timing of this case when she made a list of the things she wanted to mention. The association had a meeting yesterday that was attended by quite a few people and one of the concerns was the proximity of the El Paso Natural Gas line. Because of the incident with the Kinder Morgan gasoline pipeline they felt that what the city was asking of the developer was insufficient. They thought that to merely have an engineer verify the width and depth of the pipe was inadequate and prior to any construction and heavy equipment being brought in they would like an onsite inspection so that they did not experience what the other neighborhood did.

She did not know if the council remembered, but the prayer at the beginning of the meeting asked that they try to do what was right for everyone in Tucson. However, a vote she heard was based on their own constituents and it did not sound like the council cared about people on the north or east side. She moved to Tucson in April, they used to live up near Tucson National Golf course and maybe it was not politically smart to say, but they used to read about some of the council's decisions and laugh. When they bought their house they erred in two areas. First, they did not realize that they were moving into the city. They thought they would be in the county. Second, even though they moved in earlier this year they were

not told that they were near any pipeline that could be a danger. She could comprehend why the council suddenly wanted to have the pipeline repaired, but she could not understand why they did not ask that it be moved far out of the city and that a spur line be brought in. That was astonishing to her. She was beyond being baffled at the selfishness of the council's approach that if it did not impact their constituents it did not have importance.

Ms. Weiss noted that the developer proposed to pave San Marcos to the end. Presently San Marcos was a dirt road and it was in very poor condition, with quite a bit of vehicular traffic, garbage trucks, furniture trucks and all kind of things going through. Her neighborhood was concerned about part of it being paved and the rest left unpaved. The additional traffic the development would bring onto San Marcos that does not go down to San Juan, which was paved, would bring an incredible increase of noise and dust to the people who lived beyond the paved portion. She asked the council to consider either having the developer pave it, or have the developer or the city do a dust control paving so that it would not be such a problem for the homeowners. She hoped that in the future the council would remember that they represent everyone in Tucson.

Nancy Urias, said she was on the board of the Starr Pass Shadows Homeowners Association. She submitted a letter at the neighborhood meeting

that was held on June 30, 2003, to either Council Member Ibarra or the developer, which stated a number of concerns about the proposed development. She thought some had already been addressed in the developer's proposal, but one of her main concerns was that currently the area was zoned mobile home 1-R, which she believed meant mobile homes on one to three acres. Although the developer had indicated his intent to put houses on the new higher density lots they were still asking that the rezoning only go to MH-1, not to residential as are all of the other subdivisions in the immediate area. All of the other subdivisions were residential. The applicant was only requesting that the zoning go from mobile home 1-R to MH-1 even though they indicated that they were going to build homes. The neighbors had an investment in their homes and she believed that her subdivision was going to be of higher priced homes than the subject development. The neighborhood residents were concerned about the investment and value of their homes. In the event that something did occur in the planning of the new development the developer would have the option of putting in mobile homes in a high-density area. If they were proposing to build houses, she did not understand why they were not asking to rezone the property to residential. She did not know if at this meeting that would be clarified or if the council made a recommendation on that, but she thought it should be taken into consideration. The neighborhood would like a guarantee that homes would be put in that area, not mobile homes as a last resort.

Ms. Urias said another concern was that even though there might be conditions, covenants, and restrictions, which were rules and regulations for the homeowners to follow, sometimes there was not a strong homeowners association, or even a management company to oversee compliance with those CC&Rs. She wanted to emphasize for the sake and value of the existing homes that those kinds of things be a condition of the proposed project. She did not know if that was the council's responsibility, but she wanted it on record that they would like the proposed project to be held accountable for the CC&Rs and to have a management company oversee them. It would only be as good as the people who oversee them and sometimes homeowners associations are made up of volunteers of the neighborhood and they did not take the time to make sure everyone was following the

CC&Rs. The point about the road needed to be emphasized. She expressed concern about the four homes along San Marcos that were directly behind her neighborhood. A lot of the existing residents paid premium prices to get that privacy. The subject property was not zoned for a small subdivision when she moved in, it was zoned for mobile homes and there were only a few of them on one to three acres. They did not interfere with her neighborhood, which had a great deal of privacy. They paid premium prices for those lots so they could be in a place where they would not have someone right across the street. If there was going to be someone right across the street she wanted to make sure that there were not any two-story homes on the front of San Marcos.

Mayor Walkup asked if anyone else wished to address the council.

Lee Gobbo, said he did not live on San Juan Terrace, but his mailbox is there. He lived over the hill and he was also concerned about the MH-1 high density where before the zoning was one acre or more. He was also concerned about privacy. His house sits up on the hill and he would lose his privacy unless some kind of fence was built. Another neighbor was also concerned about the same thing.

Mayor Walkup asked if anyone else wished to address the council.

Les Parsons, said he was at the neighborhood meeting at Council Member Ibarra's office and he thought most of the items had been agreed on. However, he had reconsidered the issue of the fence. As he understood it would be an iron fence, but he preferred a block wall. The subject development would abut his property and he could not see where the cost of a block wall would be much different than that of an iron fence.

Mayor Walkup asked if anyone else wished to speak. There was no one. He asked if there was any discussion.

Council Member Ibarra said he had had a neighborhood meeting, but it was not an official meeting and he felt one should be held.

It was moved by Council Member Ibarra and seconded by Council Member West to continue the public hearing on the subject rezoning and ask the developer to have an official public hearing.

Council Member Ibarra asked that the developer get copies of all of the requests to speak that had been turned in at this meeting for the official public hearing, after which the council would again take up this matter. He thought the project had some really good points and said that at the meeting in his office. However, the residents' concerns should be addressed and the best thing to do would be to continue the case and let people go back to work toward a project that everyone agreed upon if that was okay with the developer and the neighborhood. He noted that everyone seemed to be nodding yes.

Mayor Walkup asked if there was any further discussion.

Council Member West said she thought the process was a mystery to some of the residents and that should not be. They should know what is going on. She asked that staff be

present when the meeting was held so they would know how rezoning works. They should all be working together. She asked Mr. Duarte to restate the condition.

Mr. Duarte said the condition staff was proposing to be added was that, "The developer shall include a statement on the location of El Paso Natural Gas pipeline in or along with the public report provided to prospective purchasers in accordance with Arizona Revised Statutes, Section 32-2182."

Mayor Walkup asked if there was any further discussion.

Council Member Leal asked if that was something in the closing documents or was it included in the listing of the property. Was the potential buyer made aware of the pipeline at the front end of the deal or at the end?

Mr. Duarte said it was his understanding that it would be at the front end of the deal. When a buyer signs the contract to purchase the property, they must acknowledge receipt of the public report of the subdivision.

Council Member Leal asked if that was at the time the contract was signed.
Mr. Duarte said that was correct.

Council Member Leal thought that was at the end of the deal, but other council members said it was at the front.

Council Member Leal asked if it was in the listing information with school districts and so forth.

Mr. Duarte said he was not sure what document Council Member Leal was referencing.

Council Member Leal asked if it is was close to the front end as staff could make it.

Mr. Duarte said it was.

Kathleen S. Detrick, city clerk said a date certain was needed for the continuation and recited possible meeting dates.

James Keene, city manager, said October 27, 2003, would be too soon to allow time for the meetings that needed to take place, and suggested a date no earlier than November.

Council Members Ibarra agreed and said the public hearing should be continued to November 10, 2003.

The motion to continue zoning case C9-81-45 and the public hearing to November 10, 2003, was declared carried by a voice vote of 7 to 0.

12. PUBLIC HEARING: TUMAMOC AREA PLAN AMENDMENT, MOUSSA - SUBAREA 17

Mayor Walkup announced that city manager's communication number 540, dated October 13, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing on an amendment to the *Tumamoc Area Plan* to allow mid-suburban residential density on one parcel currently developed with a single-family residence. He asked if the applicant had any comments.

Leonard Korot, vice president of the Starr Pass Neighborhood Association, in the Starr Pass resort, said in contrast to the very volatile and complex issue of the Kinder Morgan pipeline he hoped his request would be very simple and straightforward.

Mayor Walkup interrupted and said the council would hear from the applicant, then call on anyone in the audience who wished to speak.

Vincente Sanchez, representing the applicant, Mr. Moussa, said the subject development had been going on for awhile. They worked hard with the city staff, Council Member Ibarra, and the neighbors to reach their current position. He thought the project was a good one and that everyone was happy with it. The applicant would come back to the council in the near future with a request for the rezoning. The plan amendment opened the door for them to make the rezoning request.

Mayor Walkup called on Mr. Korot.

Mr. Korot said on March 14, 2003, at an informal meeting of Starr Pass residents representing ten homeowners associations within Starr Pass, Mr. Moussa presented a proposal for 70 timeshare units to be developed on his property. His proposal was met with vigorous and vehement opposition. Mr. Moussa pointed out that in order for him to move the single family R-1 development, the *Tumamoc Area Plan* would have to be amended. The residents indicated that if he moved forward on the R-1 development they would support him, but in view of the obstacle, Mr. Korot thought he moved forward on the timeshare. A task force was appointed by the homeowners associations' presidents to lead the fight against timeshare development, echoing a major battle they had in 1999. During the summer when many residents were absent, they were able to collect signatures from more than 300 residents indicating their opposition to the timeshare units. That precipitated a series of discussions between the task force members and Mr. Moussa, which ultimately led to an agreement in which he would withdraw his request for the time-share units and move ahead with the process to get approval for R-1. Mr. Korot thought it had been a very collaborative process. The residents took that agreement to each of the council members and to a member of the mayor's staff. They appreciated the attention and thoughtfulness of the council as they apprised them of the developments. They hoped to get the council's support for the agreement between Mr. Moussa and the residents and allow him to move ahead with the development of the R-1 single family residences. He especially thanked Council Member Ibarra who had been a steadfast supporter of the residents during both the 1999 fracas and this situation, and who also played a major role in helping to establish reconciliation between the residents and Mr. Moussa.

Mayor Walkup asked if anyone else wished to address the council.

It was moved by Council Member Ibarra, seconded by Council Member West, and carried by a voice vote of 7 to 0, to close the public hearing.

Mayor Walkup asked the council's pleasure.

Council Member Ibarra said it seemed like every four years the council deals with the subject property, but he wanted to thank Mr. Moussa and Mr. Sanchez because it was tough, but they worked with the residents. In the end, they saw it was much easier to work with the residents than to advocate the other side. In the end, Mr. Moussa was the one who showed a lot of leadership and vision with working with the neighborhood. He thanked the neighborhood also. People teased him about the Starr Pass Neighborhood, but the neighbors worked very hard and were committed. It was nice to see them come to the plate and put together a plan that worked for everyone. He thanked them for their patience and help during the times that he got a little off track. He noted that Starr Pass is the mayor's neighborhood and said he thought the subject plan was a good plan, a plan that was brought together by the developer and the homeowners.

It was moved by Council Member Ibarra, seconded by Council Member West, that resolution 19696 be passed and adopted.

Mayor Walkup asked if there was any discussion. There was none. He thanked the homeowners and said they are his neighbors. He walks his dog by the subject property regularly and he looked forward to seeing the project built.

Mr. Korot thanked his task force colleagues Frank Kemezis and Joy Greenway.

Mayor Walkup asked the city clerk to read resolution 19696 by number and title only.

Resolution No. 19696

Relating to planning and zoning; amending the *Tumamoc Area Plan*; and setting an effective date.

Mayor Walkup asked for the roll call.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Resolution 19696 was declared passed and adopted by a roll call vote of 7 to 0.

13. PUBLIC HEARING: *TUCSON CODE* - AMENDING (CHAPTER 23) THE *LAND USE CODE (LUC)* RELATING TO PARKING REQUIREMENTS FOR LARGE DWELLINGS AND SECOND DWELLINGS IN THE R-1 ZONE

Mayor Walkup announced that city manager's communication number 544, dated October 13, 2003, would be received into and made a part of the record. He also announced that this was the time and place legally advertised for a public hearing with respect to an amendment to the *Land Use Code* regarding parking requirements. The public hearing was scheduled to last for no more than one hour and speakers would be limited to five-minute presentations. He said he had received written requests from people wishing to speak and would call on those people after staff's presentation.

Albert Elias, comprehensive planning task force director, said staff was recommending that the proposed amendment be adopted. It would have the effect of requiring additional parking for large dwelling units, those with five or more bedrooms or when there is a second unit on a lot that has more than one bedroom. He noted for the record that, at the request of Council Member Dunbar, staff was recommending two minor revisions to the proposed amendment. The first is in the residential use group, section 3.5.7.1, under family dwelling, the last sentence should be revised to read: "The vehicular use area must be improved, which includes surface striping and provision of barriers, in conformance with Development Standard 3-05.0. Parking spaces may not be located in a vehicular use area in any front street perimeter yard." The second change was to section 6.2.2, definitions, under bedrooms, number 2, and it should be revised to read: "Any enclosed room, which has a minimum area of sixty (60) square feet and has an accessible opening to the exterior of the building in compliance with the *International Building Code*, whether termed a studio, family room, study, den, bonus room, or any other name, except for a living room, dining room, kitchen, and bathrooms." With those two changes staff recommended adoption of the proposed ordinance, which would permit the changes to the *Land Use Code*.

Mayor Walkup called on the first speaker.

Robert Schlanger, vice president of the Jefferson Park Neighborhood Association, thanked the council for considering the amendment, which will help save the neighborhood. The neighborhood is in decline due to rentals. It is one thing to live next to a rental unit, but when it has a second house in a backyard with seven bedrooms, the neighbors are faced in R-1 zoning with living next to 12 to 14 students. The subject amendment will do a good job of closing that loophole and returning the R-1 zoning to what it should be, which is single family residences.

Dyer Lytle, , president of the Jefferson Park Neighborhood Association, said the proposed amendment was considered by the planning committee when the mayor and council asked it to look at what could be done to solve some of the problems his neighborhood was having. He thought the planning commission did an excellent job and he hoped the council would accept the proposed amendment. His neighborhood was facing construction of what the residents call dormitories because they were obviously meant to be rentals and to be very large rentals. The problem that the neighborhood faced with increasing rental use was the transitory nature of the student body. It was very hard to build a

community when most of the residents only stay for a few years. He hoped the proposed amendment would stem the tide of dormitory construction in the neighborhood, partly by requiring the 12 bedroom facilities to also have parking because part of the lot would be used for parking requirements. Originally, they thought the amendment would be an overlay zone for Jefferson Park and then perhaps for other neighborhoods, but when the planning commission considered the amendment all of its members wanted it for their neighborhood too, so they decided that city-wide would be appropriate.

Mayor Walkup asked if anyone else wished to address the council. There was no one. He asked the council's pleasure.

It was moved by Council Member Dunbar, seconded by Council Member Leal, and carried by a voice vote of 7 to 0, to close the public hearing.

Council Member Dunbar said this amendment started several months ago when she brought forward the problems in the Jefferson Park Neighborhood and showed a photograph of a home that had been a two bedroom bungalow that had been turned into 12 bedroom monstrosity on a single lot. Mr. Lytle was right, the neighborhood and her office was working on an overlay for Jefferson Park and when they took it to the planning commission, much to her dismay, they all said it was great idea for the entire city. She was little nervous when it went citywide because it would require four votes to be passed and she thought she could get support for her ward, but was not sure about the whole city. The amendment was forwarded to the Southern Arizona Homebuilders Association and has been shown to every builder and developer she had come in contact with, everyone that would talk to her about it. Not one person had spoken against it. When she talked to new builders they said if they built a five-bedroom home, it has a three-car garage. So, the requirement of one parking space per bedroom in homes with five bedrooms or more would be included in a three car garage plus a driveway. She had not heard any objections to the amendment. No one spoke against it at the planning commission's public hearing and she has not had one telephone call in opposition. She did not think staff had received any telephone calls.

It was moved by Council Member Dunbar, seconded by Vice Mayor Scott, that ordinance 9906 be passed and adopted with the following revisions: (1) Residential use group, section 3.5.7.1, under family dwelling, the last sentence should be revised to read: "The vehicular use area must be improved, which includes surface striping, and provision of barriers, in conformance with Development Standard 3-05.0. Parking spaces may not be located in a vehicular use area in any front street perimeter yard." (2) Section 6.2.2, definitions, under bedrooms, number 2, should read: "Any enclosed room, which has a minimum area of sixty (60) square feet and has an accessible opening to the exterior of the building in compliance with the *International Building Code*, whether termed a studio, family room, study, den, bonus room, or any other name, except for a living room, dining room, kitchen, and bathrooms."

Ordinance No. 9906

Relating to planning and zoning; amending the Tucson Code, Chapter 23, Land Use Code; Article II, zones, Division 3, urban

residential zones; Article III, development regulations, Division 3, motor vehicle and bicycle parking requirements, Division 5, performance criteria; Article VI, definitions, Division 2, listing of words and terms; and setting an effective date.

Mayor Walkup asked if there was any discussion on the motion.

Council Member West thanked the speakers for waiting so long for this item to be heard and Council Member Dunbar for a very good job of problem solving.

Upon roll call, the results were:

Aye: Council Members Ibarra, West, Dunbar, Leal, and Ronstadt;
Vice Mayor Scott and Mayor Walkup

Nay: None

Absent/Excused: None

Ordinance 9906, as amended, was declared passed and adopted by a roll call vote of 7 to 0.

14. APPOINTMENTS TO BOARDS, COMMISSIONS, AND COMMITTEES

Mayor Walkup announced that city manager's communication number 523, dated October 13, 2003, would be received into and made a part of the record. He asked if there were any personal appointments by any member of the council. There were none.

15. MAYOR AND COUNCIL: AMENDMENT TO RULES AND REGULATIONS

Mayor Walkup announced that city manager's communication number 548, dated October 13, 2003, would be received into and made a part of the record. He asked the city clerk to read Resolution 19701 by number and title only.

Resolution No. 19701

Relating to Rules and Regulations of the Governing Body;
adding a new Rule I, reconsideration; and declaring an
emergency.

Kathleen S. Detrick, city clerk, advised that two options were presented with the proposed resolution. Option A restored the reconsideration provisions as they existed prior to 1987. Option B was a simplified provision similar to the provision used by the State Legislature and the city of Phoenix.

Mayor Walkup asked the council's pleasure.

Council Member Ibarra said he understood the intent of the proposed resolution and was not questioning that. His question, his amazement more than anything, was that something that was asked for as a future agenda item at a meeting last week made it all the way to a regular agenda this week. Usually, the council discusses items at study session with a presentation by city staff and gets the specifics from both sides of an issue. There was a process, but this item jumped from a future agenda item to a regular agenda item instantly with an emergency clause. He understood Council Member Dunbar's intent with the proposed amendment and he did not think he could change her mind, but he did think the council should discuss the item at study session and have staff present the situation.

It was moved by Council Member Ibarra that this item be continued for one week and scheduled for study session with a staff presentation, and then placed on the regular agenda.

Michael House, city attorney, said this item was an amendment of a council rule, so it was a matter for the mayor and council to decide. He could explain the alternatives, but it was not a staff initiated process. It was a council initiated process and something the council needed to decide.

Mayor Walkup asked if there was a second to Council Member Ibarra's motion.

Council Member Leal seconded it.

Mayor Walkup asked if there was any discussion.

A substitute motion was made by Council Member Ronstadt, seconded by Council Member Dunbar, that resolution 19701, option B, which is *Robert's Rules of Order*, be passed and adopted.

Mayor Walkup asked if there was any discussion.

Council Member Leal said to change the system back on the face of it could make a certain amount of sense if the council still had the normative conduct of allowing any member to put something on its agenda. However, in the last three years the majority had taken it upon itself to use the four votes to prevent a member from putting an item on the agenda, so there was already a way for the majority to repress the minority. Now that the majority was fearful that the minority might use the reconsideration to bring something to the public and have a public discussion they wanted to close that opportunity. He said there was already a convenient, available, and unfortunately, too often used means to keep people from putting something on the agenda. The majority just voted to stop it. He guessed that when people were drunk with power, they couldn't get enough and the subject amendment was just another way of doing the same thing if they got bored with using the first mechanism.

Mayor Walkup asked if there was any further discussion.

Council Member Ronstadt said he appreciated Council Member Leal's demagoguery, but all the amendment would do would be to change the council's rules to *Robert's Rules*, which have reflected the business of meetings for thousands of years. The

statements were ridiculous and did not hold water. *Robert's Rules of Order* are respected by every governing body across the nation, across democratic societies around the world.

Mayor Walkup asked for a roll call on the motion.

Upon roll call, the results were:

Aye: Council Members West, Dunbar, and Ronstadt; Mayor Walkup

Nay: Council Members Ibarra and Leal; Vice Mayor Scott

Absent/Excused: None

Resolution 19701, option B, was declared passed and adopted by a roll call vote of 4 to 3 (Council Members Ibarra and Leal and Vice Mayor Scott dissenting).

For the purpose of the emergency clause and that purpose only, Mayor Walkup called for a roll call vote.

Upon roll call, the results were:

Aye: Council Members West, Dunbar, and Ronstadt; Mayor Walkup

Nay: Council Members Ibarra and Leal; Vice Mayor Scott

Absent/Excused: None

On the second roll call for the purpose of the emergency clause and that purpose only, the vote failed 4 to 3 (Council Member Ibarra, Leal and Vice Mayor Scott dissenting).

Resolution 19701 was declared passed and adopted by a roll call vote of 4 to 3, without the emergency clause.

16. CALL TO THE AUDIENCE

Mayor Walkup announced that this was the time any member of the public was allowed to address the mayor and council. Speakers would be limited to three-minute presentations. He said he had received one written request to speak and called on that person.

A. Mayor and Council Meeting Rules

Bill Katzel, asked for procedural clarification regarding reconsideration criteria for the Kolb-Kivel rezoning case that was approved by the council in September. He said he asked two employees of the city manager's office to clarify the rules and was referred to the supervisors of the city attorney for an answer. He was instructed by the mayor's office to call the mayor and council comment line and record his request in the star system. He was promised a written response to his request within seven business days. Accordingly, he

asked the mayor and council as supervisors of the city attorney to formalize his request for a written reply from the city attorney regarding how long a period the reconsideration criteria would remain open and in effect for the Kolb-Kivel zoning. At least in the Kinder Morgan issue a motion was made and seconded, and voted on to reconsider.

B. Tucson's City Manager Form of Government

Robert Reus, said that earlier in the evening with the Kinder Morgan issue people saw a good example of city manager government in action. He asked the council to forgive him for slipping in to Ozark use. He gets tired and it is easier to make his point without having to worry about perfect diction. He had not used it much because the council's three-minute limit did not give him much time. Four people have voted away the only leverage the city had to get Kinder Morgan pipeline out of the city. If the council had left the authorized pipe at eight inches, since Kinder Morgan has already said they wanted a 12-inch pipe, they would have had to move it out of the city, but the city manager form of government allows four people to vote away the citizens rights. If Tucson had an alderman form of government, or the form he had proposed, it would have taken five votes and the mayor would have had a couple of weeks to decide whether or not he or she wanted to sign the issue. That might have given the mayor and council time to reconsider. The mayor who dared to sign such a thing would have had to face reelection and explain to the public. A ceremonial mayor election was going to be held in November, so Mr. Reus said his comments were just a thought to the voters of the city.

On another issue, Mr. Reus said there was an organization called "Independent People Like You" that was running an attack campaign against one of the city's better council members and a democratic candidate for mayor. They appeared to be running a parallel campaign trying to get around the election finance laws for the Republicans. It was very transparent and he thought the voters had a right to know who these people were. He went to the clerk's office on Friday and got a list of the contributors' names. There were a couple of prominent names that were basically financing the whole thing. He did not have time to read the names at this meeting, but he had an ACCESS Tucson cable program on which he promoted an alderman form of government for Tucson, which aired twice a month. Anyone who was intrigued by the idea could tune in and he would read the list of the people who were trying to get around the campaign finance laws and support a Republican candidate for mayor and a Republican candidate for city council. If people were intrigued by the idea or just curious they could tune in to his show. He would tell them what wonders the alderman government did for the city of Fayetteville, Arkansas when he sponsored the petition that brought it into being 11 years ago.

Mayor Walkup asked if anyone else wished to address the council.

17. ADJOURNMENT: 10:35 p.m.

Mayor Walkup announced that the council would stand adjourned until the next regularly scheduled meeting of the Mayor and Council to be held on Monday, October 20, 2003, at 2:00 p.m. in the Mayor and Council Chambers in City Hall, 255 W. Alameda, Tucson, Arizona.

MAYOR

ATTEST:

CITY CLERK

CERTIFICATE OF AUTHENTICITY

I, the undersigned, have read the foregoing transcript of the meeting of the mayor and council of the city of Tucson, Arizona held on the 13th day of October, 2003, and do hereby certify that it is an accurate transcription of the magnetic tape record of said meeting.

MANAGEMENT ASSISTANT

KSD:SM:DD:DP:mjv
Pr agnst tp:lp